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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 270

NATHAN MAYO, AS COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, ET AL.,

Appellants,

vs.

LAKELAND HIGHLANDS CANNING CO., INC., THE POLK COMPANY AND ROBERTS BROTHERS, INC., ET AL.

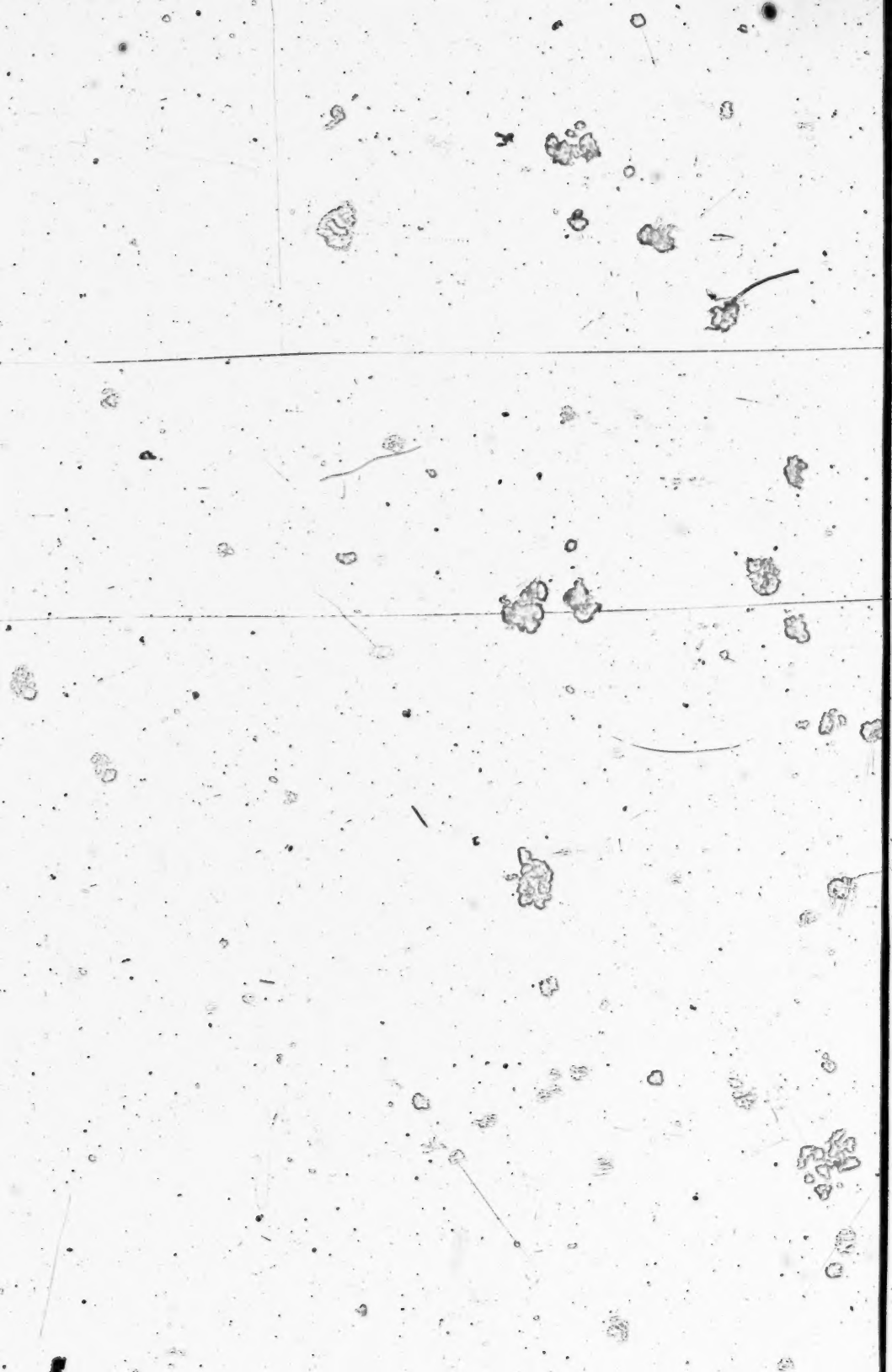
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

STATEMENT OPPOSING JURISDICTION.

John B. Sutton

G. L. REEVES,
Counsel for Appellees.

SUTTON & REEVES,
Of Counsel.



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IN THE

DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

LAKELAND HIGHLANDS CANNING CO., INC., A CORPORATION; THE POLK COMPANY, A CORPORATION; ROBERTS BROTHERS, INC., A CORPORATION; FLORIDA GRAPEFRUIT CANNING CO., A CORPORATION; D. J. APTE AND R. E. APTE, DOING BUSINESS AS APTE BROTHERS CANNING CO., FLORIDA GOLD CITRUS CORPORATION, A CORPORATION; BORDO PRODUCTS COMPANY, A CORPORATION; HILLS BROTHERS CO. OF FLORIDA, A CORPORATION; BRUCE'S JUICES, INC., A CORPORATION; ECKERSON FRUIT CANNERS, INC., A CORPORATION; SUNDINE COMPANY, A CORPORATION,

Plaintiffs,

vs.

NATHAN MAYO, AS COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA,

Defendant.

FLORIDA CITRUS COMMISSION, A BODY CORPORATE,

Intervening Defendant.

STATEMENT BY APPELLEES AGAINST JURISDICTION OF THE SUPREME COURT.

Appellees understand that the statement as to jurisdiction is solely for the purpose of showing to the Supreme

Court of the United States that the Court has jurisdiction of the appeal.

However, Appellants devote the major portion of their statement as to jurisdiction to a legal argument as to the constitutionality of the statute under attack. We do not consider this the proper place or time to burden this Court with a brief on that question. If the Court takes jurisdiction, then the merits of the question involved can properly be presented in briefs and not in this statement as to jurisdiction.

In the last few years, this Court, as well as many State courts, has been presented with many regulatory and price fixing laws.

However, suffice it to say that counsel for appellees have been unable to find any case either in the Supreme Court or any other court of record where the price was fixed upon a similar basis as that in the statute under attack in this case. The price under the Growers Cost Guarantee Law of Florida is based solely and entirely upon the cost of production of the product; and the interest of the public is not taken into consideration at all. If this law is held constitutional, then we may reasonably expect many, if not all, of the States to pass production cost laws for all products. Needless to say, the chaotic condition which would arise from such laws would be worse in this country than any panic or depression.

Inasmuch as appellants have made a major portion of their statement as to jurisdiction into a lengthy brief on the constitutionality of the statute which, as stated above, we do not understand is necessary or proper to answer at this time, there is very little left in the statement concerning the jurisdiction of the Supreme Court; therefore, no need for a lengthy statement on the part of the appellees.

Appellants criticize the District Court for rendering an

opinion on the constitutionality of the statute upon application for preliminary injunction. Appellants asked for an opinion and urged the court to determine the constitutionality of the case at that time, advising the court that although no answer or other pleadings had been filed by appellants, they were prepared to introduce evidence and requested an immediate decision on the constitutionality of the Act.

A point is made that no findings of fact or conclusions of law were entered or filed. A reading of the opinion of the three-judge court will readily show that it is a substantial compliance with the rule. This is all that is necessary. See *Sparks* v. *Mellwood Dairy*, 74 F. (2d) 695. *National Reserve Insurance Co.* v. *Scudder*, 71 F. (2d) 884. *Lewys* v. *O'Neill*, 49 F. (2d) 603. *Plant Products Company* v. *Chas. H. Chemical Co.*, 16 Fed. Supp. 553. *U. S.* v. *McIntosh*, 3 Fed. Supp. 715, cert. den. 55 S. Ct. 101, 293 U. S. 586.

The opinion is replete with findings of fact which, under authority of the Supreme Court, is binding upon that Court unless it be shown that such findings were erroneously entered. No such contention is made in the statement of the appellants.

Appellants contend that all testimony was not before the court at the time the opinion was rendered because the opinion is dated April 13 and some affidavits were not filed until April 15. This is immaterial and has no bearing upon the jurisdiction of the Supreme Court. As a matter of fact, the record shows that the opinion was not published nor filed until May 3, long after all affidavits and evidence was before the court.

It is urged by appellants that the opinion of the trial court was influenced by evidentiary considerations, thereby violating the rule laid down in the case of *Polk* v. *Glover*,

— U. S. —, 83 L. Ed. 73, 59 S. Ct. —; as well as the case of *Borden Farm Products* v. *Blaisdell*, 293 U. S. 194, 79 L. Ed. 281.

A moment's consideration shows the fallacy of this contention. In the *Polk Company* and *Borden* cases, the Court was ruling upon a motion to dismiss the complaint, entering *final decree on pleadings*. In the instant case, it was ruling upon application for interlocutory injunction and also an urgent request of defendant that the constitutionality of the Act be determined.

It is stated by Appellants that no findings or adjudication was made by the court as to the requisite jurisdictional amount of $3,000.00 and that the evidence fails to sustain the existence of the requisite amount. The law on this question has been very definitely settled in the case of *KVOS, Inc.*, v. *Associated Press*, 299 U. S. 269, 81 L. Ed. 183, first headnote is as follows:

> "That the requisite jurisdictional amount is involved in an injunction suit in a Federal District Court sufficiently appears from a general statement in the complaint that the damage to which the complaint is being subjected is in excess of $3,000.00 and that the amount involved is in excess of that sum, unless the bill contains other allegations which qualify or detract from it in such measure that when all are considered together it cannot fairly be said that jurisdiction appears on the face of the complaint."

In *Gibbs* v. *Buck*, — U. S. —, 83 L. Ed. 688, 59 Sup. Ct. 725:

> "A general allegation in a bill in equity in a Federal Court that the value of the matter in dispute exceeds the necessary jurisdictional amount is sufficient, when not traversed, to show Federal jurisdiction, unless the bill contains other allegations which so detract from such general allegation that the Court must dismiss the bill sua sponte or on the defendant's motion."

It is respectfully submitted that the sworn allegations of the complaint show not only by general allegations, which are sufficient when not challenged, but also by averments of details showing that the amount involved in the controversy is far in excess of $3,000.00 as to each of the plaintiffs. This Court has held that if jurisdictional amount is shown as to one or more plaintiffs, the case should not be dismissed but only those plaintiffs dismissed who do not have the necessary amount involved. See *Grosjean* v. *American Press Co.*, 80 L. Ed. 661, 297 U. S. 233.

Not only did Appellants, as defendants in the lower Court, fail to raise any question as to the jurisdictional amount but admitted the same affirmatively by coming in the Court and requesting the Court to take jurisdiction and decide the constitutionality of the statute involved. The jurisdictional amount has never been challenged and the plaintiffs have not been required to prove the allegations. However, the evidence does substantiate that the requisite jurisdictional amount is involved.

It is sincerely urged that in passing upon the question of jurisdiction of the appeal only, the Court does not predetermine the merits of the case and the legal brief included in Appellant's statement as to jurisdiction is improper and has no place before the Court at this time.

SUTTON & REEVES,
By G. L. REEVES.